

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 2007-307

PATRICIA D. GUTIERREZ
a.k.a. PATRICIA DIANNE GUTIERREZ
1449 West Malone Street
Hanford, CA 93230,

Respondent.

DECISION AND ORDER

The attached Stipulated Surrender of License and Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in the matter.

The Decision shall become effective on November 2, 2007.

IT IS SO ORDERED October 2, 2007.

LaTranene W Tate

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART, State Bar No. 083047
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7
8 Attorneys for Complainant

9 **BEFORE THE**
10 **BOARD OF REGISTERED NURSING**
DEPARTMENT OF CONSUMER AFFAIRS
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 2007-307

13 **PATRICIA D. GUTIERREZ,**
a.k.a. PATRICIA DIANNE GUTIERREZ
14 1449 West Malone Street
Hanford, CA 93230

STIPULATED SURRENDER
OF LICENSE AND ORDER

15 Registered Nurse License No. 576882,

16 Respondent.

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties in
18 this proceeding that the following matters are true:

19 **PARTIES**

20 1. Ruth Ann Terry, M.P.H., R.N., (Complainant) is the Executive Officer of
21 the Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
23 by Arthur D. Taggart, Supervising Deputy Attorney General.

24 2. Patricia D. Gutierrez, also known as Patricia Dianne Gutierrez,
25 (Respondent) is representing herself in this proceeding and has chosen not to exercise her right
26 to be represented by counsel.

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3. On or about February 2, 2001, the Board of Registered Nursing issued Registered Nurse License No. 576882 to Patricia D. Gutierrez a.k.a. Patricia Dianne Gutierrez ("Respondent"). The license was in full force and effect at all times relevant to the charges brought in Accusation No. 2007-307. The license expired on March 31, 2006, and has not been renewed.

JURISDICTION

4. Accusation No. 2007-307 was filed before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on July 3, 2007. Respondent timely filed her Notice of Defense contesting the Accusation. A copy of Accusation No. 2007-307 is attached as Exhibit A and is incorporated herein by reference.

ADVISEMENT AND WAIVERS

5. Respondent has carefully read and understands the charges and allegations in Accusation No. 2007-307. Respondent also has carefully read and understands the effects of her Stipulated Surrender of License and Order.

6. Respondent is fully aware of her legal rights in the matter, including the right to a hearing on the charges and allegations in the Accusation; the right to be represented by counsel, at her own expense; the right to confront and cross-examine the witnesses against her; the right to present evidence and to testify on her own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

7. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

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1 **CULPABILITY**

2 8. Respondent admits the truth of each and every charge and allegation in
3 Accusation No. 2007-307, agrees that cause exists for discipline, and she hereby surrenders her
4 Registered Nurse License No. 576882 for the Board's formal acceptance.

5 9. Respondent understands that by signing the stipulation she enables the
6 Board to issue an order accepting the surrender of her Registered Nurse license without further
7 process.

8 **CONTINGENCY**

9 10. This stipulation shall be subject to approval by the Board of Registered
10 Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the
11 Board of Registered Nursing may communicate directly with the Board regarding the stipulation
12 and surrender, without notice to or participation by Respondent. By signing the stipulation,
13 Respondent understands and agrees that she may not withdraw her agreement or seek to rescind
14 the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt
15 the stipulation as its Decision and Order, the Stipulated Surrender and Disciplinary Order shall
16 be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action
17 between the parties, and the Board shall not be disqualified from further action by having
18 considered the matter.

19 11. The parties understand and agree that facsimile copies of the Stipulated
20 Surrender of License and Order, including facsimile signatures thereto, shall have the same
21 force and effect as the originals.

22 12. In consideration of the foregoing admissions and stipulations, the parties
23 agree that the Board may, without further notice or formal proceeding, issue and enter the
24 following Order:

25 **ORDER**

26 IT IS HEREBY ORDERED that Registered Nurse License No. 576882, issued to
27 Respondent Patricia D. Gutierrez, also known as Patricia Dianne Gutierrez, is surrendered and
28 accepted by the Board of Registered Nursing.

1 13. The surrender of Respondent's registered nurse license and the acceptance
2 of the surrendered license by the Board shall constitute the imposition of discipline against
3 Respondent. The stipulation constitutes a record of the discipline and shall become a part of
4 Respondent's license history with the Board.

5 14. Respondent shall lose all rights and privileges as a Registered Nurse in
6 California as of the effective date of the Board's Decision and Order.

7 15. Respondent shall cause to be delivered to the Board both her wall and
8 pocket license certificates on or before the effective date of the Decision and Order.

9 16. Respondent fully understands and agrees that if she ever files an
10 application for licensure or a petition for reinstatement in the State of California, the Board shall
11 treat it as a petition for reinstatement. Respondent must comply with all the laws, regulations
12 and procedures for reinstatement of a revoked license in effect at the time the petition is filed,
13 and all of the charges and allegations contained in Accusation No. 2007-307 shall be deemed to
14 be true, correct and admitted by Respondent when the Board determines whether to grant or
15 deny the petition.

16 17. Upon reinstatement of the license, Respondent shall pay to the Board
17 costs associated with its investigation and enforcement pursuant to Business and Professions
18 Code section 125.3 in the amount of Four Hundred Eighteen Dollars and Twenty-Five Cents
19 (\$418.25). Respondent shall be permitted to pay these costs in a payment plan approved by the
20 Board.

21 18. Respondent shall not apply for licensure or petition for reinstatement for
22 two (2) years from the effective date of the Board of Registered Nursing's Decision and Order.

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ACCEPTANCE

I am aware of my right to retain private counsel at my own expense. I have chosen to represent myself in these proceedings.

I have carefully read the Stipulated Surrender of License and Order. I understand the stipulation and the effect it will have on my Registered Nurse license. I enter into the Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Board of Registered Nursing.

DATED: July 30, 2007


PATRICIA D. GUTIERREZ
a.k.a. PATRICIA DIANNE GUTIERREZ
Respondent

ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: August 6, 2007

EDMUND G. BROWN JR., Attorney General
of the State of California


ARTHUR D. TAGGART
Supervising Deputy Attorney General

Attorneys for Complainant

Exhibit A
Accusation No. 2007-307

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 ALFREDO TERRAZAS
Senior Assistant Attorney General
3 ARTHUR D. TAGGART, State Bar No. 83047
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Facsimile: (916) 327-8643
7

8 Attorneys for Complainant
9

10 **BEFORE THE**
BOARD OF REGISTERED NURSING
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 2007-307

13 PATRICIA D. GUTIERREZ,
a.k.a. PATRICIA DIANNE GUTIERREZ
14 1449 West Malone Street
Hanford, CA 93230
15

A C C U S A T I O N

16 Registered Nurse License No. 576882

17 Respondent.

18 Complainant alleges:
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PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. ("Complainant") brings this Accusation
21 solely in her official capacity as the Executive Officer of the Board of Registered Nursing
22 ("Board"), Department of Consumer Affairs.

23 2. On or about February 2, 2001, the Board issued Registered Nurse License
24 Number 576882 to Patricia D. Gutierrez, also known as Patricia Dianne Gutierrez
25 ("Respondent"). Respondent's registered nurse license was in full force and effect at all times
26 relevant to the charges brought herein. Respondent's registered nurse license expired on March
27 31, 2006.

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STATUTORY PROVISIONS

3. Business and Professions Code ("Code") section 2750 provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

4. Code section 2764 provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under Code section 2811, subdivision (b), the Board may renew an expired license at any time within eight years after the expiration.

5. Code section 2761 states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

(a) Unprofessional conduct, which includes, but is not limited to, the following:

....

(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a health care professional license or certificate by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that action.

....

(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof...

6. Code section 2762 states, in pertinent part:

In addition to other acts constituting unprofessional conduct within the meaning of this chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

(a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or administer to another, any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as defined in Section 4022.

....

1 (c) Be convicted of a criminal offense involving the prescription,
2 consumption, or self-administration of any of the substances described in
3 subdivisions (a) and (b) of this section, or the possession of, or falsification of
4 a record pertaining to, the substances described in subdivision (a) of this section,
5 in which event the record of the conviction is conclusive evidence thereof . . .

6 7. Code section 2765 states:

7 A plea or verdict of guilty or a conviction following a plea of nolo
8 contendere made to a charge substantially related to the qualifications, functions
9 and duties of a registered nurse is deemed to be a conviction within the meaning
10 of this article. The board may order the license or certificate suspended or revoked,
11 or may decline to issue a license or certificate, when the time for appeal has elapsed,
12 or the judgment of conviction has been affirmed on appeal or when an order
13 granting probation is made suspending the imposition of sentence, irrespective of
14 a subsequent order under the provisions of Section 1203.4 of the Penal Code
15 allowing such person to withdraw his or her plea of guilty and to enter a plea of
16 not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
17 information or indictment.

18 8. Code section 4323 states:

19 Every person who, in order to obtain any drug, falsely represents himself
20 or herself to be a physician or other person who can lawfully prescribe the drug,
21 or falsely represents that he or she is acting on behalf of a person who can
22 lawfully prescribe the drug, in a telephone or electronic communication with a
23 pharmacist, shall be punished by imprisonment in the county jail for not more
24 than one year.

25 9. California Code of Regulations, title 16, section 1444 states, in pertinent
26 part:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or
acts shall include but not be limited to the following:

.....
(c) Theft, dishonesty, fraud, or deceit . . .

10. Health and Safety Code section 11170 states that no person shall prescribe,
administer, or furnish a controlled substance for himself.

COST RECOVERY

11. Code section 125.3 provides, in pertinent part, that the Board may request
the administrative law judge to direct a licentiate found to have committed a violation or

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1 violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation
2 and enforcement of the case.

3 **CONTROLLED SUBSTANCE AT ISSUE**

4 12. "Norco", a brand of hydrocodone bitartrate and acetaminophen, is a
5 Schedule III controlled substance as designated by Health and Safety Code section 11056,
6 subdivision (e)(4).

7 **FIRST CAUSE FOR DISCIPLINE**

8 **(Criminal Conviction)**

9 13. Respondent is subject to disciplinary action pursuant to Code section 2761,
10 subdivision (f), in that on or about December 12, 2003, in the criminal proceeding titled *People*
11 *v. Patricia Dianne Gutierrez* (Sup. Ct., County of Kings, Hanford Division, 2003, Case No.
12 03CM3910), Respondent was convicted by the court on her plea of nolo contendere to violating
13 Code section 4323 (false representation as authorized prescriber), a crime substantially related to
14 the qualifications, functions, and duties of a registered nurse. The circumstances of the crime are
15 that on or about September 11, 2003, Respondent telephoned in to the pharmacy department at
16 the Longs Drugs located in Hanford, California, a refill prescription for the controlled substance
17 Norco to obtain the medication for herself. Further, Respondent falsely represented to pharmacy
18 staff that she was a representative of Dr. Sorenson's office and that the refill prescription had
19 been authorized by Dr. Sorenson.

20 **SECOND CAUSE FOR DISCIPLINE**

21 **(Unlawful Prescription of a Controlled Substance)**

22 14. Respondent is subject to disciplinary action pursuant to Code section 2761,
23 subdivision (a), on the grounds of unprofessional conduct, as defined by Code section 2762,
24 subdivision (a), in that on or about September 11, 2003, Respondent prescribed the controlled
25 substance Norco for herself, as set forth in paragraph 13 above, in violation of Health and Safety
26 Code section 11170.

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1 3. Taking such other and further action as deemed necessary and proper.
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3 DATED: 6-25-07
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6 RUTH ANN TERRY, M.P.H., R.N.
7 Executive Officer
8 Board of Registered Nursing
9 Department of Consumer Affairs
10 State of California

11 Complainant
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EXHIBIT A

STIPULATED SURRENDER OF LICENSE AND ORDER

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Against:

PATRICIA D. GUTIERREZ
P.O. Box 685
Armona CA 93202

Case No. R-1910

Respiratory Care Practitioner License No. 16912

Respondent.

DECISION AND ORDER

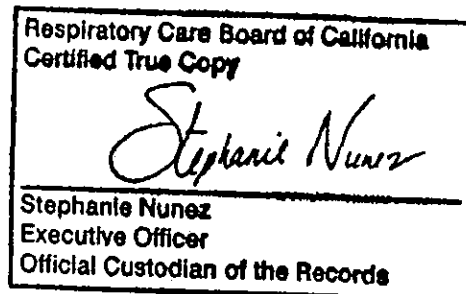
The attached Stipulated Surrender of License and Order is hereby adopted by the Respiratory Care Board, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 16, 2004

It is so ORDERED August 5, 2004



FOR THE RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
SCOTT SVONKIN, RCB PRESIDENT



1 BILL LOCKYER, Attorney General
2 of the State of California
3 VIVIEN H. HARA
4 Supervising Deputy Attorney General
5 CATHERINE E. SANTILLAN
6 Senior Legal Analyst
7 California Department of Justice
8 455 Golden Gate Avenue, Suite 11000
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10 Telephone: (415) 703-5579
11 Facsimile: (415) 703-5480

12 Legal Representatives for Complainant

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**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. R-1910

PATRICIA D. GUTIERREZ
P.O. Box 685
Armona CA 93202

**STIPULATED SURRENDER OF
LICENSE AND ORDER**

Respiratory Care Practitioner License No. 16912

Respondent.

IT IS HEREBY STIPULATED AND AGREED by and between the parties in this proceeding that the following matters are true:

PARTIES

1. Stephanie Nunez (Complainant) is the Executive Officer of the Respiratory Care Board of California. Respondent brought this action solely in her official capacity and is represented in this matter by Bill Lockyer, Attorney General of the State of California, by Catherine E. Santillan, Senior Legal Analyst.

2. Patricia D. Gutierrez (Respondent) is representing herself in this proceeding and has chosen not to exercise her right to be represented by counsel.

3. On or about January 21, 1994, the Respiratory Care Board of California issued Respiratory Care Practitioner License No. 16912 to Patricia D. Gutierrez (Respondent).

1 The License was in full force and effect at all times relevant to the charges brought in Accusation
2 No. R-1910 and will expire on February 28, 2005, unless renewed.

3 JURISDICTION

4 4. Accusation No. R-1910 was filed before the Respiratory Care Board
5 (Board), Department of Consumer Affairs, and is currently pending against Respondent. The
6 Accusation and all other statutorily required documents were properly served on Respondent on
7 June 14, 2004. Respondent timely filed her Notice of Defense contesting the Accusation. A
8 copy of Accusation No. R-1910 is attached as exhibit A and incorporated herein by reference.

9 ADVISEMENT AND WAIVERS

10 5. Respondent has carefully read, and understands the charges and allegations
11 in Accusation No. R-1910. Respondent also has carefully read, and understands the effects of
12 this Stipulated Surrender of License and Order.

13 6. Respondent is fully aware of her legal rights in this matter, including the
14 right to a hearing on the charges and allegations in the Accusation; the right to be represented by
15 counsel, at her own expense; the right to confront and cross-examine the witnesses against her;
16 the right to present evidence and to testify on her own behalf; the right to the issuance of
17 subpoenas to compel the attendance of witnesses and the production of documents; the right to
18 reconsideration and court review of an adverse decision; and all other rights accorded by the
19 California Administrative Procedure Act and other applicable laws.

20 7. Respondent voluntarily, knowingly, and intelligently waives and gives up
21 each and every right set forth above.

22 CULPABILITY

23 8. Respondent admits the truth of each and every charge and allegation in
24 Accusation No. R-1910, agrees that cause exists for discipline and hereby surrenders her
25 Respiratory Care Practitioner License No. 16912 for the Board's formal acceptance.

26 9. Respondent understands that by signing this stipulation she enables the
27 Board to issue an order accepting the surrender of her Respiratory Care Practitioner License
28 without further process.

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1 and all of the charges and allegations contained in Accusation No. R-1910 shall be deemed to be
2 true, correct and admitted by Respondent when the Board determines whether to grant or deny
3 the petition.

4 16. Should Respondent ever apply or reapply for a new license or certification,
5 or petition for reinstatement of a license, by any other health care licensing agency in the State of
6 California, all of the charges and allegations contained in Accusation No. R-1910 shall be
7 deemed to be true, correct, and admitted by Respondent for the purpose of any Statement of
8 Issues or any other proceeding seeking to deny or restrict licensure.

9 17. Respondent shall pay the Board its costs of investigation and enforcement
10 in the amount of \$546.00 before a petition for reinstatement of the license will be considered.

11 ACCEPTANCE

12 I have carefully read the Stipulated Surrender of License and Order. I understand
13 the stipulation and the effect it will have on my Respiratory Care Practitioner License. I enter
14 into this Stipulated Surrender of License and Order voluntarily, knowingly, and intelligently, and
15 agree to be bound by the Decision and Order of the Respiratory Care Board.

16 DATED: 7/02/04

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18 Patricia D. Gutierrez
19 Patricia D. Gutierrez
20 Respondent

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ENDORSEMENT

The foregoing Stipulated Surrender of License and Order is hereby respectfully submitted for consideration by the Respiratory Care Board of the Department of Consumer Affairs.

DATED: July 7, 2004

BILL LOCKYER, Attorney General
of the State of California

Catherine Santillan
CATHERINE E. SANTILLAN
Senior Legal Analyst

Legal Representatives for Complainant

DOJ Matter ID: SF2004AD0141
40027939.wpd

Exhibit A

Accusation No. R-1910

FILED
STATE OF CALIFORNIA
RESPIRATORY CARE BOARD
SACRAMENTO JUNE 14 20 04
BY PRIVATA ANALYST

1 BILL LOCKYER, Attorney General
of the State of California
2 VIVIEN H. HARA
Supervising Deputy Attorney General
3 CATHERINE E. SANTILLAN
Senior Legal Analyst
4 California Department of Justice
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Telephone: (415) 703-5579
6 Facsimile: (415) 703-5480

7 Legal Representatives for Complainant

8 **BEFORE THE**
9 **RESPIRATORY CARE BOARD**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:

Case No. R-1910

12 PATRICIA D. GUTIERREZ
P.O. Box 685
13 Armona CA 93202

ACCUSATION

14 Respiratory Care Practitioner Licese No. 16912

15 Respondent.

16
17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Accusation solely in her
20 official capacity as the Executive Officer of the Respiratory Care Board of California,
21 Department of Consumer Affairs.

22 2. On or about January 21, 1994, the Respiratory Care Board issued
23 Respiratory Care Practitioner Licese Number 16912 to Patricia D. Gutierrez (Respondent). The
24 Respiratory Care Practitioner Licese was in full force and effect at all times relevant to the
25 charges brought herein and will expire on February 28, 2005, unless renewed.

26 JURISDICTION

27 3. This Accusation is brought before the Respiratory Care Board (Board),
28 Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 3710 of the Code states: "The Respiratory Care Board of
3 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
4 8.3, the Respiratory Care Practice Act]."

5 5. Section 3718 of the Code states: "The board shall issue, deny, suspend,
6 and revoke licenses to practice respiratory care as provided in this chapter."

7 6. Section 3750 of the Code states:

8 "The board may order the denial, suspension or revocation of, or the imposition of
9 probationary conditions upon, a license issued under this chapter, for any of the following
10 causes:

11 "(d) Conviction of a crime that substantially relates to the qualifications,
12 functions, or duties of a respiratory care practitioner. The record of conviction or a
13 certified copy thereof shall be conclusive evidence of the conviction.

14 "(g) Conviction of a violation of any of the provisions of this chapter or of any
15 provision of Division 2 (commencing with Section 500), or violating, or attempting to
16 violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to
17 violate any provision or term of this chapter or of any provision of Division 2
18 (commencing with Section 500).

19 "(j) The commission of any fraudulent, dishonest, or corrupt act which is
20 substantially related to the qualifications, functions, or duties of a respiratory care
21 practitioner.

22 "(l) Changing the prescription of a physician and surgeon, or falsifying verbal or
23 written orders for treatment or a diagnostic regime received, whether or not that action
24 resulted in actual patient harm."

25 7. Section 3752 of the Code states:

26 "A plea or verdict of guilty or a conviction following a plea of nolo contendere
27 made to a charge of any offense which substantially relates to the qualifications,
28 functions, or duties of a respiratory care practitioner is deemed to be a conviction within

1 the meaning of this article. The board shall order the license suspended or revoked, or
2 may decline to issue a license, when the time for appeal has elapsed, or the judgment of
3 conviction has been affirmed on appeal or when an order granting probation is made
4 suspending the imposition of sentence, irrespective of a subsequent order under Section
5 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to
6 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the
7 accusation, information, or indictment."

8 8. California Code of Regulations, title 16, section 1399.370, states:

9 "For the purposes of denial, suspension, or revocation of a license, a crime or act
10 shall be considered to be substantially related to the qualifications, functions or duties of
11 a respiratory care practitioner, if it evidences present or potential unfitness of a licensee to
12 perform the functions authorized by his or her license or in a manner inconsistent with the
13 public health, safety, or welfare. Such crimes or acts shall include but not be limited to
14 those involving the following:

15 "(a) Violating or attempting to violate, directly or indirectly, or assisting or
16 abetting the violation of or conspiring to violate any provision or term of the Act."

17 COST RECOVERY

18 9. Section 3753.5, subdivision (a) of the Code states:

19 "In any order issued in resolution of a disciplinary proceeding before the board,
20 the board or the administrative law judge may direct any practitioner or applicant found to have
21 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
22 investigation and prosecution of the case."

23 10. Section 3753.7 of the Code states:

24 "For purposes of the Respiratory Care Practice Act, costs of prosecution shall
25 include attorney general or other prosecuting attorney fees, expert witness fees, and other
26 administrative, filing, and service fees."

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1 11. Section 3753.1 of the Code states:

2 "(a) An administrative disciplinary decision imposing terms of probation may
3 include, among other things, a requirement that the licensee-probationer pay the monetary costs
4 associated with monitoring the probation. "

5 FIRST CAUSE FOR DISCIPLINE

6 (Conviction)

7 12. Respondent is subject to disciplinary action under sections 3750(d) and
8 3752 [conviction], 3750(g) and CCR 1399.370 [violation of any provision], 3750(j) [dishonest
9 act] and 3750(l) [changing a physician's prescription]. The circumstances are as follows:

10 13. On or about September 11, 2003, M.B., the pharmacist at Long's Drugs in
11 Hanford, California, called the Hanford Police Department regarding a false prescription and
12 stated that the suspect was in the waiting area of the store. Police Officer J. Feierbach responded.
13 M.B. told Officer Feierbach that she received a message on the answering machine used by
14 doctors to request prescription medication refills for patients. The message was from a woman
15 who identified herself as "Becky from Dr. Sorenson's office." "Becky" requested a refill for
16 respondent's prescription for "Norco 7.5 grams", but stated that the prescription should be
17 decreased to "30 only." M.B. phoned Dr. Sorenson's office to confirm the refill request. S.M. at
18 Dr. Sorenson's office informed M.B. that no one named "Becky" was employed in the office.
19 Dr. Sorenson told Officer Feierbach that although he had prescribed medication in the past for
20 respondent, he did not authorize a refill for Norco.

21 14. On or about September 11, 2003, at approximately 6:22 p.m., Respondent
22 entered Long's Pharmacy and requested her prescription refill. M.B. then called the Hanford
23 Police Department while respondent was waiting for the refill.

24 15. Officer Feierbach spoke with respondent when he first arrived at Long's
25 Drugs Pharmacy. She stated that she had called her doctor's office and left a message on the
26 answering machine requesting a refill of hydrocodone. She assumed the request for the refill was
27 filled and went to Long's Drugs to pick it up. After Officer Feierbach spoke to M.B., he again
28 asked respondent to explain what had occurred. She admitted that she phoned in the prescription

refill to the pharmacy department at Longs Drugs, and that she did it because she knew that Dr. Sorenson would not refill it. She stated that she obtained the original prescription one week earlier, and that she had run out. She stated that the prescription stated that it was to be refilled once a month, but she had already used the month's supply. Respondent admitted that she was addicted to hydrocodone and had a [drug abuse] problem, and that she was glad she was finally caught because she realized her addiction had gotten out of hand. Respondent was arrested for a violation of Penal Code section 459 [burglary] and Business and Professions code section 4324 [false prescription.]

16. On or about October 8, 2003, a complaint titled *People of the State of California v. Patricia D. Gutierrez*, case no. 03CM3910 was filed in Superior Court, Kings County, Hanford Division. Count 1 charged respondent with a misdemeanor violation of Business and Professions code section 4323 in that respondent, in order to obtain a drug, falsely represented that she was acting on behalf of a physician, in a telephonic communication with a pharmacist. On or about December 12, 2003, respondent entered a plea of no contest to the charge. The Court accepted her plea, and found a factual basis for the charge. Respondent was convicted of Count 1, and ordered to appear for sentencing on January 15, 2004.

17. On January 15, 2004, the Court issued a Minute Order. Respondent was granted conditional release probation for three years under terms and conditions, ordered to serve one day in jail with credit for one day served, and to pay fines totaling \$2,700.00.

18. Therefore, respondent's license is subject to discipline in that she was convicted of a misdemeanor violation of Business and Professions code section 4323 in violation of code sections 3750(d) and 3752 [conviction], 3750(g) and CCR 1399.370 [violation of any provision], 3750(j) [dishonest act] and 3750(l) [changing a physician's prescription].

PRAYER


WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

1. Revoking or suspending Respiratory Care Practitioner License Number 16912, issued to Patricia D. Gutierrez.

1 2. Ordering Patricia D. Gutierrez to pay the Respiratory Care Board the costs
2 of the investigation and enforcement of this case, and if placed on probation, the costs of
3 probation monitoring;

4 3. Taking such other and further action as deemed necessary and proper.

5 DATED: June 14, 2004

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8 
9 STEPHANIE NUNEZ
10 Executive Officer
11 Respiratory Care Board of California
12 Department of Consumer Affairs
13 State of California
14 Complainant

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